Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

USX CORPORATION;
U.S. STEEL MINING COMPANY, INC.
Petitioners,

v.

JOANNE B. BARNHART,
Commissioner of Social Security,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a district court abuse its discretion under Rule 15(a) of the Federal Rules of Civil Procedure if it refuses to permit a party to amend a pleading based on the party's delay in seeking leave to amend, where the delay did not prejudice the non-moving party or burden on the district court and the moving party was not acting in bad faith?

PARTIES TO THE PROCEEDINGS

The only parties to this proceeding are those identified in the caption.

CORPORATE DISCLOSURE STATEMENT

Petitioner, USX Corporation (now known as United States Steel Corporation) has no parent corporation and no publicly held company owns 10% or more of USX Corporation's stock.

Petitioner, U.S. Steel Mining Company, Inc.'s (now U.S. Steel Mining Company, LLC) parent corporation is United States Steel Corporation, which owns 10% or more of its membership interests.

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Cases:

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Other Authorities:

Charles Alan Wright, Arthur R. Miller &
Mary Kay Kane, 6 *Federal Practice and*
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OPINIONS BELOW

The March 31, 2005 decision of the court of appeals denying the petition for rehearing and rehearing *en banc* is reprinted in the Appendix hereto ("App.") at 1a. The December 23, 2004 opinion of the court of appeals is reported at 395 F.3d 161 (3d Cir. 2004) and is reprinted at App. 3a. The November 20, 2002 decision of the district court and the September 17, 2002 decision of the magistrate judge are reprinted at App. 26a and 27a, respectively.

BASIS FOR JURISDICTION

The court of appeals entered judgment against USX Corporation and U.S. Steel Mining Company, Inc. on December 23, 2004. The companies filed a timely Petition for Rehearing and Rehearing En Banc, which the court of appeals denied on March 31, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

REQUIRED NOTIFICATION

In accordance with Rules 14(b)(v) and 29(4)(b) of the Rules of the Supreme Court of the United States, Petitioners will provide the Solicitor General of the United States with a copy of this Petition.

FEDERAL RULE OF CIVIL PROCEDURE INVOLVED

Federal Rule of Civil Procedure 15(a)

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to

which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. (Emphasis added.)

STATEMENT OF THE CASE

A. Introduction

This case concerns an unjust denial of a proposed amendment to a thirteen-count complaint at the summary judgment stage of the case. USX Corporation (now known as United States Steel Corporation) and U.S. Steel Mining Company, Inc. (now United States Steel Mining Co., LLC) (collectively "USS") sought to have the Commissioner of Social Security ("SSA") rescind certain assignments SSA had made under the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. 9701 *et seq.*, including approximately 51 assignments SSA had made on the basis that USS was a successor to a prior operator. As a result of SSA's filing the Administrative Record, USS' counsel discovered that SSA had made 34 other "successorship" assignments.

Following this Court's decision in *Sigmon Coal Co. v. Barnhart*, 534 U.S. 438 (2002), which struck down SSA's successorship doctrine, USS sought leave to amend the complaint to include the 34 other "successorship" assignments

it had discovered. The lower court denied the proposed amendment. The lower court reasoned that someone within USS (not counsel) must have known of the 34 other "successorship" assignments long before USS filed its complaint. The lower court determined such knowledge, coupled with USS' prior opportunities to amend the complaint, established undue delay sufficient to deny leave to amend.

Significantly, the lower court did not find that USS acted in bad faith or that the proposed amendment would have prejudiced SSA or burdened the court in any respect. Additionally, given the decision in *Sigmon,* including the 34 other "successorship" assignments in the anticipated summary judgment papers on the newly revived successorship counts would not have required any discovery or delayed the proceedings in the slightest. Thus, by upholding the denial of leave to amend under these circumstances, the Third Circuit joined a minority of the circuit courts that hold delay, unaccompanied by prejudice to the opposing party, bad faith, or unwarranted burden on the court, can justify the denial of a proposed amendment.

B. Procedural and Factual Background.

On July 2, 1999, USS filed an eight-count complaint against SSA seeking to have the district court order SSA to rescind certain assignments SSA had made to USS under the Coal Act.[1] Five of the counts attacked SSA's assignments

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[1] The district court had jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1346, and 1361 as well as 5 U.S.C. §§ 702 and 704.

under its "successorship" doctrine. The district court granted summary judgment to SSA with respect to all five of USS' "successorship" counts on September 29, 2000.

USS amended its complaint twice to add new counts addressing different issues. USS filed its First Amended Complaint to add Counts IX, X and XI on November 3, 1999 (before SSA filed an answer to the original complaint). USS sought leave to file a Second Amended Complaint adding Counts XII and XIII on April 15, 2001, which the district court granted on December 3, 2001.

USS' counsel drafted the original complaint with reference to approximately 51 "successorship" assignments identified in letters from SSA.[2] Nearly two years later, as a result of SSA's filing of the Administrative Record on May 18, 2001 and while USS' motion for leave to file a Second Amended Complaint was pending, USS' counsel found other letters from SSA containing 34 more "successorship" assignments. By then, however, the district court had already granted summary judgment to SSA with respect to all of the "successorship" counts in the original complaint and moving to amend the complaint to add the newly discovered "successorship" assignments would have been futile.

In February 2002, this Court struck down SSA's successorship doctrine in *Sigmon*. Following that decision, USS asked the district court to lift the summary judgment with respect to two of the "successorship" counts and grant USS relief from all "successorship" assignments, including the 34 USS had recently identified from the Administrative Record. In the alternative, USS moved to amend its

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[2] SSA assigned over 5000 beneficiaries to USS under the Coal Act.

complaint for a third time to correct the names of some of the original 51 "successorship" assignments and to include the 34 newly discovered "successorship" assignments. When USS sought leave to amend, the parties still had to file summary judgment motions with respect to the newly revived successorship issue, as well as Counts XII and XIII of the Second Amended Complaint.

On September 17, 2002, the magistrate judge denied USS' motion for leave to amend in part and granted it in part. App. at 27a-28a. The magistrate judge permitted USS to filed a Third Amended Complaint to correct the names of the "successorship" assignments that had been identified in the SSA letters attached to the original complaint; however, the magistrate judge refused to permit USS to add the 34 newly discovered "successorship" assignments. The magistrate judge reasoned that (1) the requested amendment was futile since it raised new claims barred by the statute of limitations, and (2) USS had unduly delayed in moving to amend. App. at 34a - 41a. The district court upheld the magistrate judge's partial denial of USS' motion for leave to amend on November 20, 2002. App. at 26a.

Despite the partial denial of USS' motion for leave to amend, the case continued on for over a year. The magistrate judge did not issue a report on the newly revived "successorship" counts until April 8, 2003, over six months after she denied USS' motion for leave to amend, and the magistrate judge did not issue a report on the remaining two counts in the complaint until September 2, 2003, nearly a year after she denied USS' motion for leave to amend. The district court entered final judgment on January 2, 2004.

The Court of Appeals for the Third Circuit affirmed the district court's partial denial of USS' motion for leave to